

1 VERNON A. NELSON, JR., ESQ.
Nevada Bar No.: 6434
2 MELISSA INGLEBY, ESQ.
Nevada Bar. No.: 12935
3 THE LAW OFFICE OF VERNON NELSON
9480 S. Eastern Ave., Ste. 252
4 Las Vegas, NV 89123
Tel.: 702-476-2500
5 Fax.: 702-476-2788
E-mail: vnelson@nelsonlawfirmnv.com
6 mingleby@nelsonlawfirmnv.com
Attorney for Plaintiff Tana Magel fka Tana Barre
7

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
10

11 TANA MAGEL, formerly known as TANA
BARRE,

12 Plaintiff,

13 v.

14 RICHLAND HOLDINGS, INC. d/b/a
15 ACCTCORP OF SOUTHERN NEVADA, a
Nevada Corporation; R.C. WILLEY aka RC
16 WILLEY FINANCIAL SERVICES, and
DONNA ARMENTA d/b/a Donna Armenta
17 Law,

18 Defendants.
19

Case No.:

**COMPLAINT FOR DAMAGES
PURSUANT TO THE FAIR DEBT
COLLECTION PRACTICES
ACT 15 § 1692, ET. SEQ.
AND RELATED STATE LAWS
AND
JURY DEMAND**

20 Plaintiff, TANA MAGEL, formerly known as TARA BARRE ("Plaintiff" or "Magel"), by
21 and through her attorney of record, the Law Office of Vernon Nelson, and for her claims for relief
22 against Defendants, RICHLAND HOLDINGS, INC. d/b/a RICHLAND OF SOUTHERN
23 NEVADA, a Nevada Corporation; R.C. WILLEY aka RC WILLEY FINANCIAL SERVICES, and
24 DONNA ARMENTA d/b/a Donna Armenta Law. (hereinafter collectively referred to as
25 "Defendants"), complains and alleges as follows:

JURISDICTION AND VENUE

26 1. This action arises out of Defendants' violations of the Fair Debt Collection
27 Practices Act, 15 U.S.C. § 1692, *et. seq.* ("FDCPA") and related State Law Claims.
28

1 9. This action arises out of Defendants' violations of the Fair Debt Collection Practices
2 Act, 15 U.S.C. § 1692, et. seq. ("FDCPA") and related State Law Claims. Plaintiff alleges the
3 Defendants engaged in unlawful conduct that gives rise to Plaintiff's Complaint. Plaintiff is seeking
4 to recover damages caused by the Defendants' unlawful conduct. Plaintiff contends: she did not
5 know Defendants committed the multiple violations described below until she retained a credit
6 repair agency in July 2017. However, Plaintiff is not seeking to set aside the underlying state court
7 judgment or to direct any order to the state court.

8 10. On or about March 28, 2017, Richland filed a lawsuit against Plaintiff in Justice
9 Court of Las Vegas Township, Case No. 17C006175 (the "Collection Lawsuit"). The Collection
10 Lawsuit alleges Plaintiff entered into a contract with RCW for services in or around October 28,
11 2006 (the "Contract").

12 11. Upon information and belief, the Contract was governed by Utah law.

13 12. The Collection Lawsuit further alleges Plaintiff failed to pay the amount owed to
14 RCW under the Contract (the "Debt"). The alleged Debt is the sum of \$1,126.75, including a
15 contractual collection fee of \$563.38 for a total of \$1,690.13, plus interest accruing at a contractual
16 rate of 24% from the date of assignment until paid.

17 13. Upon information and belief, the identified collection fee is equal to 50% of the
18 principal balance assigned to Richland. Utah Code §12-1-10(3)(b) states the collection fee may not
19 exceed 40% of the principal balance of the Debt. Thus, the 50% collection fee is illegal under Utah
20 law, which governs the Contract.

21 14. The Collection Lawsuit further alleges RCW assigned the account to Richland on
22 February 17, 2017.

23 15. Richland retained Armenta to file the Collection Lawsuit on its behalf.

24 16. On or about April 24, 2017, Defendants obtained and filed a Confession of
25 Judgement ("COJ") against Plaintiff.

26 17. The COJ reflects a principal sum of \$1,690.13, plus interest accruing at a contractual
27 rate of 24%, plus attorney's fees in the amount of \$300.00, and court fees and costs in the amount
28 of \$161.50 for a total of \$2,224.98. Under Utah Consumer Credit Code 70C-2-201, "Authorization

1 to confess judgment prohibited. A creditor or its successor in interest may not, directly or indirectly,
2 take or receive from a debtor an obligation that constitutes or contains a . . . confession of judgment
3 . . . or other waiver of the right to notice and the opportunity to be heard in the event of suit or
4 process thereon.” Thus, the COJ is illegal under Utah law, which governs the contract (the “COJ
5 Violation”).

6 18. On June 27, 2017, Defendants filed the Notice of Entry of Judgment (“NOJ”) against
7 Plaintiff.

8 19. On or about July 19, 2017, Defendants obtained a Writ of Execution (“Writ #1”) and
9 served it upon Plaintiff’s employer, Gold Medal Service to enforce the judgment.

10 20. On or about November 30, 2017, Defendants obtained a second Writ of Execution
11 (“Writ #2”) and served it upon Plaintiff’s employer, Gold Medal Service to enforce the judgment.

12 21. On or about February 16, 2017, Defendants filed a Satisfaction of Judgment.

13 22. On or about February 27, 2017, the Clerk of the Court filed the returned Writ of
14 Execution which reflected a total levy in the amount of \$2,835.98.

15 23. Plaintiff alleges Richland and Armenta committed multiple violations of the FDCPA.
16 Plaintiff further alleges causes of action for abuse of process, violation of NRS Chapter 598
17 Deceptive Trade Practices, and Civil Conspiracy.

18 24. Upon information and belief, the Contract is governed by Utah law, which limits
19 contractual collection fees to 40% of the principal amount owed to the creditor. Plaintiff further
20 alleges that Defendants Armenta and Richland violated the FDCPA by charging unlawful collection
21 charges because the collection fee was equal to 50% of the principal balance of the Debt (the
22 “Collection Fee Violation”).

23 25. Plaintiff alleges that §1692(g) of the FDCPA requires that debt collectors provide
24 debtors with written notice of the Debt; and notice of the Debtor’s right to verify the Debt (the
25 “Validation Notice”). Plaintiff, upon information and belief, alleges that Armenta and Richland
26 unlawfully failed to provide the Validation Notice; and that these Defendants failed to notify
27 Plaintiff that the alleged amount owed included a collection fee equal to 50% of the principal balance
28 of the Debt. (the “§1692(g) Violations”).

1 26. Plaintiff also alleges Defendants unlawfully charged Plaintiff 24% interest on the
2 total amount allegedly due including the unlawful contractual collection fee (the “Interest Fee
3 Violation”).

4 27. Plaintiff also alleges these Defendants’ actions give rise to claims for Abuse of
5 Process.

6 28. Further, Plaintiff alleges RCW violated NRS Chapter 598 Deceptive Trade Practices,
7 and all Defendants formed an illicit agreement which is the basis for a Civil Conspiracy.

8 29. Plaintiff alleges Defendants Richland and Armenta’s collective violations of the
9 FDCPA and their other wrongful acts have caused Plaintiff to suffer substantial economic damages,
10 severe emotional damages, and damages to her credit history and reputation. Plaintiff has also
11 incurred substantial attorney’s fees in the bringing this action. Finally, in her prayer for relief,
12 Plaintiff prays for damages caused by all Defendants’ conduct. Plaintiff is not requesting any relief
13 from the state court judgment.

14 30. The FDCPA prohibits abusive debt collection practices by debt collectors. In this
15 regard, the FDCPA sets certain standards for debt collectors and their communications with debtors.
16 These standards include: (1) the requirement that debt collectors advise debtors of their rights to
17 dispute the debt and demand verification; (2) a ban on the use of false and misleading statements in
18 attempting to collect the debt; and (3) a prohibition against collecting debts via "unfair or
19 unconscionable means," such as charging debtors for unauthorized fees beyond the amount in
20 arrears.

21 31. Defendants Richland and Armenta committed several violations of the FDCPA.
22 Defendants used “unfair and unconscionable means” to collect the debt by committing The
23 Collection Fee Violations. Defendants also obtained a COJ against Plaintiff in violation of Utah
24 Consumer Code. Also, Defendants Richland and Bowen violated the FDCPA by committing the §
25 1692(g) Violations and The Interest Fees Violations.

26 32. Defendants’ violations of the FDCPA have caused the Plaintiff to suffer substantial
27 damages. In this regard, the Plaintiff has suffered: (1) substantial economic damages; (2) severe
28 emotional damages, and (3) damages to his credit history and reputation.

- B. by employing various false representations and deceptive means to collect the alleged Debt.
- C. by taking illegal action to collect The Debt.
- D. by attempting to collect more than was due on The Debt.
- E. by continuing to garnish Plaintiff's assets using illegal actions

43. The COJ Violation, Collection Fee Violation, §1692(g) Violations and Interest Fees Violations and other numerous violations of the FDCPA constitute numerous, repeated, knowing, intentional, reckless and/or negligent violations of the FDCPA. As a result of such violations, the Plaintiff is entitled to statutory damages, plus actual damages to be proven at the time of trial in this matter.

44. As a result of Defendants Richland and Armenta's unlawful conduct, Plaintiff has suffered economic and emotional distress damages.

45. Plaintiff has been forced to retain counsel to pursue this matter and is entitled to recover reasonable attorney's fees plus costs incurred under 15 U.S.C. § 1692k.

SECOND CLAIM FOR RELIEF

[Abuse of Process against Defendants Richland and Armenta]

46. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

47. Defendants Richland and Armenta commenced and/or prosecuted legal proceedings against Plaintiff for the ulterior purpose of collecting unlawful rates of interest and unlawful fees in violation of the FDCPA.

48. By attempting to collect the unlawful rates of interest and by prosecuting an action based on unlawful collection practices committed by the Defendants Richland and Armenta, the Defendants Richland and Armenta conducted a willful act in the use of the legal process that was not proper in the regular conduct of the proceeding.

49. Plaintiff has suffered damages as a consequence of Defendants Richland and Armenta's abuse of the legal process in an amount to be determined by a jury at trial.

THIRD CLAIM FOR RELIEF

[Violation of NRS Chapter 598 Deceptive Trade Practices Against Defendant RCW]

50. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

51. Plaintiff is “consumer” pursuant to the NRS Chapter 598 Deceptive Trade Practices.

52. In assigning the debt to Richland, and allowing Defendants Richland and Armenta to obtain a COJ against Plaintiff in violation of Utah Consumer Code, RCW engaged in unfair or deceptive acts or practices in the conduct of its commerce or trade through its unfair and deceptive debt collection and litigation activities in violation of NRS Chapter 598. RCW’s violations of NRS Chapter 598 include, but are not limited to, NRS 598.0923(3): Violates a state or federal statute or regulation relating to the sale or lease of goods or services.

53. Plaintiff has suffered and continue to suffer damages as a result of RCW’s unfair and deceptive acts and conduct.

54. Plaintiff is entitled to recover all compensatory and actual damages (including, but not limited to emotional distress and punitive damages), as well as treble damages, costs and attorney’s fees as provided by NRS Chapter 598.

FOURTH CLAIM FOR RELIEF

[Civil Conspiracy Against All Defendants]

55. Plaintiff incorporates by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

56. The Defendants undertook a concerted action with the intent to commit the COJ Violation, Collection Fee Violations, The § 1692(g) Violations and The Interest Fees Violations.

57. The Defendants involved in this cause of action number two or more entities.

58. The Defendants agreed to make false statements to Plaintiff and the state court regarding the collection practices, the excessive collection fees and the excessive interest in violation of Nevada law.

59. The Defendants further agreed to obtain a COJ against Plaintiff in violation of Utah Consumer Code 70C-2-201.

60. The Defendants also agreed to collect fees and interest in excess of the legal limits

1 imposed in Utah law 12-1-11 and Nevada law in violation of those states' laws.

2 61. The Defendants' actions constituted crimes, specifically NRS sections 598.0915,
3 598.0923 and others to be proven at trial.

4 62. Defendants' objective in this conspiracy was to prevent disclosure to the state court,
5 to Plaintiff and to other entities in order to receive far greater economic advantage from the
6 transaction.

7 63. Defendants and each of them by acting in concert with each other, in their specific
8 groupings, intended to accomplish an unlawful objective for the purpose of harming Plaintiff.

9 64. By doing the acts complained of herein, Defendants and each of them, acted with
10 oppression, fraud or malice towards Plaintiff. Defendants and each of them, by the acts alleged
11 herein, intended to cause injury to Plaintiff and engaged in despicable conduct with a willful and
12 conscious disregard of the rights of Plaintiff. The above described conduct subjected Plaintiff to
13 cruel and unjust hardship in conscious disregard of Plaintiff's rights. Because of the despicable and
14 egregious conduct of Defendants, as herein alleged, Plaintiff is entitled to and does hereby demand
15 punitive or exemplary damages in a sum to be proved at trial sufficient to punish and deter
16 Defendants and each of them, from so acting in the future.

17 65. Plaintiff sustained damages as a result of these unlawful acts in an unknown amount,
18 greater than \$75,000.00.

19 66. That it has become necessary for Plaintiff to retain the Law Offices of Vernon A.
20 Nelson to prosecute this action, and therefore, Plaintiff is entitled to reasonable attorney's fees
21 therefore.

22 WHEREFORE Plaintiff prays for judgment against Defendants for all damages to which she
23 is entitled in such categories and in such amounts as deemed appropriate by the jury and this Court.

24 ///

25 ///

26 ///

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all of the issues in this action.

DATED this 24^h day of April, 2018.

THE LAW OFFICE OF VERNON NELSON

By: /s/Vernon Nelson
VERNON NELSON, ESQ.
Nevada Bar No.: 6434
MELISSA INGLEBY, ESQ.
Nevada Bar No.: 12935
9480 S. Eastern Avenue, Suite 252
Las Vegas, NV 89123
Tel: 702-476-2500
Fax: 702-476-2788
E-Mail: vnelson@nelsonlawfirmly.com
mingleby@nelsonlawfirmly.com
Attorney for Plaintiff Tana Magel fka Tana Barre